

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201501804	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/25/2015 10:05 PM	Location of Incident: East 37th Street Between Glenwood Road and Avenue H	Precinct: 67	18 Mo. SOL 8/25/2016	EO SOL 8/25/2016	
Date/Time CV Reported Mon, 03/09/2015 2:50 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/09/2015 2:50 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Mcdonald	23355	947240	067 PCT
2. POM Matthew Hauswirth	02912	947067	067 PCT
3. SGT Sean Claxton	01500	943092	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Mcdonald	Abuse: In the vicinity of East 37th Street and Avenue H in Brooklyn, PO Christopher McDonald frisked § 87(2)(b)	
B.POM Christophe Mcdonald	Abuse: In the vicinity of East 37th Street and Avenue H in Brooklyn, PO Christopher McDonald searched § 87(2)(b)	
C.SGT Sean Claxton	Discourtesy: In the vicinity of East 37th Street and Avenue H in Brooklyn, Sgt. Sean Claxton spoke rudely to § 87(2)(b)	
D.POM Matthew Hauswirth	Abuse: In the vicinity of East 37th Street and Avenue H in Brooklyn, and inside the 67th Precinct stationhouse, PO Matthew Hauswirth refused to provide his name and shield number to § 87(2)(b)	
E.SGT Sean Claxton	Abuse: In the vicinity of East 37th Street and Avenue H in Brooklyn, and inside the 67th Precinct stationhouse, Sgt. Sean Claxton refused to provide his name and shield number to § 87(2)(b)	
F.POM Christophe Mcdonald	Abuse: In the vicinity of East 37th Street and Avenue H in Brooklyn, and inside the 67th Precinct stationhouse, PO Christopher McDonald refused to provide his name and shield number to § 87(2)(b)	
G.SGT Sean Claxton	Abuse: Inside the 67th Precinct stationhouse, Sgt. Sean Claxton threatened to arrest § 87(2)(b)	

Case Summary

On March 9, 2015, § 87(2)(b) filed a complaint with the CCRB online (encl. [3A-J]). On February 25, 2015, at 10:05 p.m., § 87(2)(b) was riding his bicycle on East 37th Street between Avenue H and Glenwood Road in Brooklyn, when he was stopped by three police officers of the 67th Precinct, Sgt. Sean Claxton, PO Matthew Hauswirth, and PO Christopher McDonald. PO McDonald allegedly frisked and searched § 87(2)(b) (**Allegations A and B**). Sgt. Claxton allegedly told § 87(2)(b) “I am twice your fucking age,” and, “Keep licking your fucking lips.” (**Allegation C**). § 87(2)(b) was removed to the 67th Precinct stationhouse so that summonses could be issued to him. Both on scene and at the stationhouse, PO Hauswirth, Sgt. Claxton, and PO McDonald all allegedly refused to provide their names and shield numbers to § 87(2)(b) (**Allegation D, E, and F**). Sgt. Claxton allegedly threatened to arrest § 87(2)(b) (**Allegation G**). § 87(2)(b) was released from the 67th Precinct stationhouse with four summonses, § 87(2)(b).

Mediation, Notice of Claim, and Criminal Histories

§ 87(2)(b) rejected mediation § 87(2)(b). A Notice of Claim request was submitted on April 22, 2015, and will be added to the case file upon receipt (encl. [7A]). § 87(2)(b) has never been convicted of a crime (encl. [6I-K]). § 87(2)(a) 160.50 [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. [2D]).
- PO McDonald has been a member of the service for 6 years. None of the prior allegations against him has been substantiated (encl. [2C]).
- PO Hauswirth has been a member of the service for 6 years. None of the prior allegations against him has been substantiated (encl. [2B]).
- Sgt. Claxton has been a member of the service for 8 years. Of the 11 allegations made against him across four cases, three have been substantiated (encl. [2A]):
 - In CCRB case 201400940, allegations of a stop, frisk, and refusal to provide name or shield were substantiated. The Board recommended Command Discipline A for the refusal to provide name and shield and Command Discipline B for the stop and frisk. The NYPD disposition is pending.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) alleged that a black male officer who sat in the front passenger seat of the police vehicle spoke rudely to him, refused to provide his name and shield to him, and threatened to arrest him. § 87(2)(g)

§ 87(2)(b) alleged that a black male officer who sat in the rear passenger seat of the police vehicle frisked him and searched him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that he repeatedly requested that all three officers provide their names and shield numbers to him. § 87(2)(g)

Allegations Not Pleaded

- § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: In the vicinity of East 37th Street and Avenue H in Brooklyn, PO Christopher McDonald frisked § 87(2)(b)

Allegation B – Abuse of Authority: In the vicinity of East 37th Street and Avenue H in Brooklyn, PO Christopher McDonald searched § 87(2)(b)

It is not disputed that PO Christopher McDonald frisked and searched § 87(2)(b) § 87(2)(g)

§ 87(2)(b) (encl. [3A-T]) alleged that as soon as he stopped his bicycle, PO McDonald approached him and asked, “Can I search you?” § 87(2)(b) told PO McDonald that he did not have anything and that he could go ahead. PO McDonald then patted down § 87(2)(b) s legs, sides, and shoulders before reaching into the pockets of his sweatpants and jacket and removing his keys, wallet, cell phone, and headphones. The frisk and search lasted approximately five minutes. § 87(2)(b) denied raising his voice during this incident or otherwise behaving in an uncooperative fashion.

No cameras were located in the vicinity of this incident, nor were there any known witnesses.

PO McDonald (encl. [4G-Q]) acknowledged that he frisked § 87(2)(b) but said he only did so once § 87(2)(b) had been handcuffed and was about to be placed in a police vehicle for transport to the stationhouse so that he could receive a summons, as PO McDonald did not carry a summons book with him that day. PO Hauswirth (encl. [4R-V]) corroborated that PO McDonald frisked § 87(2)(b) once he was handcuffed and about to be placed in the police vehicle. PO Hauswirth did not remember if § 87(2)(b) was ever frisked before this point. PO Hauswirth thought § 87(2)(b) was not searched until after his arrival at the 67th Precinct stationhouse. PO McDonald and PO Hauswirth both said that § 87(2)(b) was irate and raised his voice.

Sgt. Claxton (encl. [4A-F]) said § 87(2)(b) was frisked by an officer – he did not remember which – before the determination was made to bring him back to the stationhouse, as his irate behavior, which included screaming and gesticulating with his hands, led officers to fear for their safety. Aside from this irate behavior, Sgt. Claxton had no reason to believe § 87(2)(b) was armed or posed a threat to the officer’s safety. Sgt. Claxton said § 87(2)(b) was not searched until he reached the front desk at the 67th Precinct stationhouse. All officers interviewed denied that permission was requested or granted prior to conducting the frisk.

An officer must reasonably believe that a person is armed in order to frisk them. People v. De Bour, 40 N.Y.2d 210 (1976) (encl. [1A-K]). An officer who frisks a suspect and feels a possible weapon on a suspect’s person may subsequently search the suspect for that possible weapon and remove it. People v. Walton, 4 Misc. 3d 1018(A) (Sup. Ct. Bronx Co. 2004) (encl. [1L-N]) A request for consent to search an individual is a common-law inquiry that must be

supported by a founded suspicion that criminality is a foot. People v. Hollman, 79 N.Y.2d 181 (1992) (encl. [1O-W])

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Discourtesy: In the vicinity of East 37th Street and Avenue H in Brooklyn, Sgt. Sean Claxton spoke rudely to § 87(2)(b)

§ 87(2)(b) said that Sgt. Claxton told him, “I am twice your fucking age,” and, “Keep licking your fucking lips.”

All officers interviewed denied saying this, or hearing any officer say it. All denied using, or hearing any officer use, profanity during this encounter.

§ 87(2)(g)

Allegation D – Abuse of Authority: In In the vicinity of East 37th Street and Avenue H in Brooklyn and inside the 67th Precinct stationhouse, PO Matthew Hauswirth refused to provide his name and shield number to § 87(2)(b)

Allegation E – Abuse of Authority: In the vicinity of East 37th Street and Avenue H in Brooklyn and inside the 67th Precinct stationhouse, Sgt. Sean Claxton refused to provide his name and shield number to § 87(2)(b)

Allegation F – Abuse of Authority: In the vicinity of East 37th Street and Avenue H in Brooklyn and inside the 67th Precinct stationhouse, PO Christopher McDonald refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that repeatedly throughout this incident, both on scene and at the 67th Precinct stationhouse, he told Sgt. Claxton, PO McDonald, and PO Hauswirth, “I want all of your names and shield numbers.” PO McDonald and PO Hauswirth never acknowledged his requests. Sgt. Claxton initially told him, “You’ll get that information later.” § 87(2)(b) thought Sgt. Claxton may have said his name as he was placing § 87(2)(b) in the backseat of the police vehicle. However, Sgt. Claxton said it so quickly that § 87(2)(b) could not catch it, and because § 87(2)(b) was in handcuffs, he could not make any note of it.

PO McDonald said he provided § 87(2)(b) with his name upon initial approach. He never heard § 87(2)(b) request that information from him or any other officer, and never refused to provide it to him, or heard any officer refuse to provide it.

PO Hauswirth said he did not hear any request for his name or shield number, or that of any officer, on scene. PO Hauswirth said that when he arrived at the 67th Precinct stationhouse, § 87(2)(b) asked Sgt. Claxton for his shield number, which Sgt. Claxton provided. When PO

Hauswirth then offered to provide his name and shield number to § 87(2)(b) refused to accept it, saying, “No, you’ve been cool so far.”

Sgt. Claxton said he heard § 87(2)(b) repeatedly both on scene and at the stationhouse request his name and shield number, and that each time he provided it, and heard PO McDonald and PO Hauswirth provide it. Sgt. Claxton also heard PO McDonald tell § 87(2)(b) that his identifying information would be listed on the summonses. Sgt. Claxton never refused to provide this information to § 87(2)(b) or heard any officer do so.

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

Allegation G – Abuse of Authority: Inside the 67th Precinct stationhouse, Sgt. Sean Claxton threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that as he left the 67th Precinct stationhouse, Sgt. Claxton told him, “Get out of here or I’ll lock you up for trespassing.”

All officers interviewed denied making this statement, or hearing any officer do so. At no point did any of them believe § 87(2)(b) could have been arrested for trespassing.

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date